Supreme Court, U.S.
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No. _____

In the

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2001

IVAN KERR

Petitioner

v.

RONNIE COHEN, A/K/A RONALD ALAN COHEN, RONALD ALLEN COHEN, R. ALLAN COHEN,

Respondent

On Petition for a Writ of Certiorari to the Court of Appeals for the State of Georgia in Case No. A01A0941

PETITION FOR WRIT OF CERTIORARI

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60 pp

QUESTION PRESENTED

Whether dissociation of Georgia Courts from 18 U. S. C. 3664 (l), which provides that a Defendant convicted of a restitution-qualified offense shall be estopped from denying the essentials of that offense in any state civil proceeding brought by a victim, violates the Supremacy Clause of the United States Constitution.

TABLE OF CONTENTS

QUESTION PRESENTED.....i

TABLE OF CITED AUTHORITIES.....iv

OPINIONS.....1

JURISDICTION.....2

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....2

STATEMENT.....3

I. BACKGROUND.....4

II. PROCEEDINGS BELOW.....6

REASONS FOR GRANTING PETITION.....9

CONCLUSION.....13

INDEX TO APPENDICES.....15

APPENDIX A.....1a

APPENDIX B.....3a

APPENDIX C.....8a

APPENDIX D.....10a

APPENDIX E.....15a

APPENDIX F.....17a

APPENDIX G.....31a

APPENDIX H.....35a

APPENDIX I.....36a

APPENDIX J.....37a

APPENDIX K.....38a

APPENDIX L.....39a

TABLE OF CITED AUTHORITIES

Page

Article VI, Clause 2, The Constitution of the United States of America (The Supremacy Clause).....2, 3

Victims and Witness Protection Act of 1982.....8, 10

Title 18 United States Code § 3663 A(a)(2).....3, 9,10

Title 18 United States Code § 3663 A(c)1(A)ii.....3

Title 18 United States Code § 3664(l).....3, 6,7,9

Cases in alphabetical order

Howlett by Howlett v. Rose, 496 U.S. 356 (1990)...12,13

Jones v. Rath Packing Co., 430 U.S. 519 (1977).....12

M'Culloch v. Maryland, 17 U.S. 406 (1819).....11

Poloney et.al v. Tambrands, Inc.
260 Ga. 251 (1991)(Georgia Supreme Court case citing *Jones, supra*).....11

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2001

IVAN KERR, *Petitioner*

v.

RONNIE COHEN, A/K/A RONALD ALAN COHEN, RONALD ALLEN COHEN, R. ALLAN COHEN,

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF GEORGIA

Ivan Kerr, Petitioner herein, respectfully petitions for a writ of certiorari to review the judgment of the Court of Appeals of the State of Georgia in this case.

OPINIONS BELOW

The opinion of the Georgia Court of Appeals in Kerr v. Cohen is reported at *Kerr v. Cohen,* 249 Ga. App. 392, 397 (2) (548 SE2d 17)(2001)(App., *infra,* 17a).

The underlying criminal case, unreported, is United States District Court, Northern District of Florida, Gainesville Division, Case # 1:98CR19MP.(*infra,* 5, 11) The trial level civil case, unreported except for transcripts, is *Ivan Kerr v. Ronald Cohen et.al.,* Thomas County Civil Action No. 99-CV-1188.

JURISDICTION

The Court of Appeals of Georgia entered its judgment on April 10, 2001 and denied reconsideration on April 26, 2001. (App.H, *infra*, 35a).

The Supreme Court of Georgia denied certiorari on September 7, 2001. (App. I, *infra,*36a*)*.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(l).

INVOLVED CONSTITUTIONAL PROVISIONS AND STATUTES

"This Constitution, and the Laws of the United States which shall be made in pursuance thereof; and all Treaties made, or which shall be made,

under the Authority of the United States shall be the supreme law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

Articles VI, Clause 2, Constitution of the United States of America (The Supremacy Clause).

The Victim and Witness Protection Act of 1982, specifically:

Title 18 United States Code § 3663 A(a)(2) (definition of a victim) see Appendix "J", 37a.

Title 18 United States Code § 3663 A(c)1(A) ii (offenses qualifying for restitution) see Appendix "K",38a.

Title 18 United States Code § 3664 (l) (estoppel of criminal defendant from defense of state court recovery) see Appendix "L",39a.

STATEMENT

A. BACKGROUND

Petitioner, Ivan Kerr, is a victim of an advanced fee money-laundering scheme.

Respondent, Ronald A. Cohen, is a former Thomasville, Georgia attorney, currently incarcerated in Federal Prison for his involvement.

During the 1990's, Cohen and others were involved in a highly-organized scheme which had as its objective the identification and recruitment of clients who needed multi-million dollar amounts of capital for a variety of business projects and investments. Prospective clients were required to transmit fees of from $50,000.00 to $2 million dollars to an attorney or bank escrow account at an "offshore" bank for purposes of application. The funds were to be held in escrow until certain contract terms were met, one of which was that the clients provide the group a bank guarantee, usually 20% of the capital sought, to fund the group's profit. Failure to comply with the funding within a short time period resulted in forfeiture.

In reality, the group did not have access to the funding capital, and their operations were specifically designed to go through the process in order to collect the original advance fee, which was then split among them.

More specifically as to Respondent, he initially became involved as "escrow agent" for the funds and later, as attorney for the "escrow agent," an offshore bank. His membership in the legal profession was specifically calculated to lend credibility to the operation.

In the course of his involvement, Respondent, a member if a four attorney partnership in Thomasville, Georgia, opened an office as "R. Alan Cohen" as opposed to "Ronald A. Cohen" in Coolidge, Georgia, a smaller town some 20 miles from Thomasville.

Petitioner was a "client," or victim of the scheme, and testified at the United States District Court criminal trial of some of those involved.

Respondent was indicted on March 24, 1998 (United States District Court, Northern District of Florida,

Gainesville Division, Case # 1:98CR19MP) for Laundering of Monetary Instruments (Title 18 U.S.C. § 1956), the underlying offense being specified as Fraud by Wire (Title 18 U.S.C. § 1343).

He entered a guilty plea to the charges on January 21, 1999.

He was sentenced on April 25, 2001, i.a., to 121 months in prison subsequent to hearings as to his bond forfeiture and revocation of his Plea and Cooperation Agreement. The United States District Court Judge imposing the sentence found him responsible for all transactions and losses channeled through his Coolidge, Georgia office. Included in these transactions was that of petitioner, Ivan Kerr.

B. PROCEEDINGS BELOW

Long before Respondent's sentencing, Petitioner filed suit against Respondent in Thomas County Georgia,

Superior Court on November 18,1999, a legal and equitable action for fraud, conversion, and to set aside contract, in an attempt to recover his losses.[1]

A Motion for Summary Judgment as to Liability was filed by petitioner on January 25, 2000, based heavily upon Title 18 U.S.C. § 3664(l)

[1] Petitioner's case, Kerr v. Cohen, Thomas County Civil Action No. 99-CV-1188, was but one of three lawsuits filed against Respondent Cohen, which were grounded and have been treated similarly. Austin v. Cohen, Civil Action No. 99-CV-0249 and Herrman v. Cohen, Civil Action No.00-CV-0048 are at this time pending discretionary review by the Supreme Court of Georgia.

"A conviction of a defendant for an offense involving the act giving rise to an order of restitution shall estop the defendant from denying the essential allegations of that offense in any subsequent Federal civil proceeding or State civil proceeding, to the extent consistent with State law, brought by the victim."

Title 18 U.S.C. § 3664(l) (Victim and Witness Protection Act of 1982)

The Motion was denied on March 2, 2000[Appendix "A", *infra,* 1a]. The Order is silent as to the federal law.

Respondent then filed Motion for Summary Judgment on September 25, 2000. Petitioner's response [Appendix "B", *infra,* 3a], not specifically repeating Title 18 USC § 3664(l), relies upon the previous filings before the same judge, and review thereof in accordance with Georgia law of Motion for Summary Judgment.

The Order granting Defendant's Motion [Appendix "C",*infra,* 8a. (mistakenly dated May 12 as opposed to October 12, 2000)], again, is silent as to federal law.

Appeal was filed November 9, 2000. Petitioner's

Brief to the Georgia Court of Appeals [Appendix "D", *infra*, 10a] and, more specifically, Petitioner's Response Brief [Appendix "E", *infra,* 15a] stressed and re-stressed the seemingly controlling federal law, as did the Motion for Reconsideration [Appendix "G", *infra,* 31a], which followed the Court of Appeals decision [Appendix "F", *infra,* 17a], again, ignoring the United States law.

The Motion for Reconsideration was denied [Appendix "H", *infra,* 35a], and the Supreme Court of Georgia declined further review albeit application which was made upon the same principles, on September 7, 2001. [Appendix "I", *infra*, 36a]

ARGUMENT

REASONS FOR GRANTING PETITION

The instant fact situation is simple albeit condensed from a lengthy and intricate scheme: a victim from whom something is taken is entitled to return of its value. This is most basic equity.

United States law provides for this principle, in part via the Victim and Witness Protection of 1982.

"A conviction of a defendant for an offense involving the act giving rise to an order of restitution shall estop the defendant from denying the essential allegations of that offense in any subsequent Federal civil proceeding or State civil proceeding, to the extent consistent with State law, brought by the victim."

Title 18 U.S.C. § 3664(l) (Victim and Witness Protection Act of 1982)

The decisions of Georgia Courts of which review is sought make no mention of the federal law, neither stating conflict with state law nor noting inapplicability to petitioner's sought relief.

Both Laundering of Monetary Instruments (Title 18 U.S.C. § 1956) and the underlying fraud offense (Title 18 U.S.C. § 1343) are "offenses against property under this title, including any offenses committed by fraud or deceit..."Title 18 U.S.C. § 3663 (A)(c) l A)ii.

Petitioner is decidedly a "victim," "...a person directly and proximately harmed as a result of the commission of a scheme, conspiracy, or pattern of criminal activity, any

person directly harmed by the defendant's criminal conduct in the course of the scheme, conspiracy, or pattern..." Title 18 U.S.C. § 3663 A(a)(2).

All that is lacking is the application of the United States law by the State of Georgia.

That United States law must be applied and, if conflicting, override state law is well established. The government of the United States, though limited in its powers, is supreme; and its laws, when made in pursuance of the Constitution, form the supreme law of the land, anything in the constitution or laws of any state to the contrary notwithstanding." *M'Culloch v. Maryland,* 17 U.S. 406 (1819).

The Supremacy Clause of the United States Constitution dictates that federal law pre-empts inconsistent state law, may be either express or implied, and is compelled whether Congress' command is explicitly stated in the statute's language, usage or implicitly contained in its structure and purpose. *Poloney et. al. v. Tambrands, Inc.* 260 Ga 251(1991)

citing, i.a., *Jones v. Rath Packing Co.*, 430 U.S. 519 (1977).

Petitioner here deserves implicitly, at the very least, the protection of the Victim and Witness Protection Act of 1982.

The underlying United States District Court case is not complete. There have been 22 indictments, 15 guilty pleas, two trials of twelve and four weeks in duration, and four guilty verdicts. Two remain fugitives. Assets and proceeds are still being sought. [United States District Court, Northern District of Florida, Gainesville Division, Case # 1:98CR19MP]

The same presiding federal judge found Respondent responsible, at sentencing, for 38 transactions resulting in $6,028,090.00 in losses to victims. [United States District Court, Northern District of Florida, Gainesville Division, Case # 1:98CR19MP]

The Georgia Courts disagree, again, ignoring United States law.

Federal law is enforceable in state courts not

because Congress has determined that federal courts would otherwise be burdened or that state courts might provide a more convenient forum...but because the [US] Constitution and laws passed pursuant to it are as much laws in the States as laws passed by the state legislature. *Howlett by Howlett v. Rose,* 496 US 356 (1990)

CONCLUSION

The language and logic of *Howlett* are inescapable: An excuse that is inconsistent with or violates federal law is not a valid excuse: the Supremacy Clause forbids state courts to dissociate themselves from federal law because of disagreement with its content or a refusal to recognize the superior authority of its source. 496 U.S. @358.

Such dissociation is obvious here, and review is

warranted and the petition for writ of certiorari should be granted.

Respectfully submitted

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Thomasville, Georgia
229.226.5551

October Term 2001

INDEX TO APPENDICES

APPENDIX A

(Trial Courts Order denying Petitioners Motion for Summary Judgment)

APPENDIX B

(Petitioners Response Brief to Respondents Motion for Summary Judgment)

APPENDIX C

(Trial Courts Order granting Respondents Motion for Summary Judgment)

APPENDIX D

(Petitioners Appeal Brief to the Georgia Court of Appeals)

APPENDIX E

(Petitioners Response to Respondents Brief to the Georgia Court of Appeals)

APPENDIX F

(Georgia Court of Appeals decision affirming trial Courts grant of Summary Judgment to Respondent)

APPENDIX G

(Petitioners Motion of Reconsideration to the Georgia Court of Appeals)

APPENDIX H

(Georgia Court of Appeals denial of Petitioners Motion for Reconsideration)

APPENDIX I

(Georgia Supreme Courts denial of writ of certiorari)

APPENDIX J

(Title 18 U.S.C. § 3663 A (a) (2))

APPENDIX K

(Title 18 U.S.C. § 3663 A (c) (1) (A) ii)

APPENDIX L

(Title 18 U.S.C. § 3664 (l))

(reprint of court document) *Appendix "A"*

IN THE SUPERIOR COURT

THOMAS COUNTY

STATE OF GEORGIA

Ivan Kerr, *Plaintiff* Civil Action File

v. # 99-CV-1188

Ronald Cohen, a/k/a

Ronald Alan Cohen, Ronald

Allen Cohen, R. Allan Cohen, *Defendant*

ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Plaintiff Ivan Kerr filed on January 25, 2000 a Motion for Summary Judgment as to liability. This Motion came on regularly for hearing at the Thomas County Courthouse on February 28, 2000. The Plaintiff was represented by Arthur J. Shelfer, Jr. Defendant was present in court accompanied by his attorney, T. Mark Thedieck. It appears that there are genuine issues of material facts to be determined in this case, therefore, the plaintiff's Motion for Summary Judgment as to liability

is OVERRULED AND DENIED at this time.

So ORDERED this 2nd day of March, 2000.

_____

John S. Langford, Senior Judge

Superior Courts, State of Georgia

Sitting by designation in the Superior Court

of Thomas County

Original for filing to:

Honorable David Hutchings, Jr. Clerk, Thomas County Superior Court

(reprint of court document) *Appendix "B"*

IN THE SUPERIOR COURT

COUNTY OF THOMAS

STATE OF GEORGIA

Ivan Kerr, *Petitioner* Case File No:99-CV-1188

v.

Ronnie Cohen, a/k/a Ronald

Alan Cohen, Ronald Allan Cohen,

R. Allan Cohen, *Defendant.*

PLAINITIFF'S BRIEF IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

STATEMENT OF FACTS

Plaintiff, Ivan Kerr, requests Judicial Notice of relevant Court records in instant case as well as those relevant in Thomas County Civil Action No. 99-CV-0249 (Austin v. Cohen) and Thomas County Civil Action No. 00-CV-0048 (Herrman v. Cohen), companion cases hereto, pursuant to O.C.G.A. § 24-1-4, 24-5-31, and 24-10-135.

Plaintiff notes further, that single authenticated or certified copies of documents and sealed transcripts have been filed when and where relevant and cross-indexed inasmuch as possible.

As to the documents questioned by Movant in the fourth paragraph of his second brief page, the reference is to documents summarized in United States District Court papers, filed and furnished to Defendant months earlier. See, e.g., United States District Court Affidavit for Cohen Warrant, PP. 246-322, Exhibits to Herrman v. Cohen Motion for Summary Judgment filed August 4, 2000, Cohen's Change of Plea Hearing Transcript, Id., PP 323-355, and documents furnished to Defendant's counsel by Plaintiff's Austin and/or Herrman, Id., PP.153-245, as well as Certificate of Counsel, Id., P. 150.

Cohen attaches to instant Motion an "affidavit" dated August 22, 2000. This presumably, is the "affidavit" referred to in Movant's Motion for More Definite Statement, filed March 15, 2000 (P.2 Brief),

questioned by counsel on May 1, 2000 (Transcript of Hearing, PP. 22-23), (Herrman Summary Judgment Exhibit, PP. 122-124), and discussed by the Court (Id., P 124) which now surfaces some five months later.

Movant, however, previously stated under oath, that he had never contacted Ivan Kerr (Defendant's Answers and Objections to Plaintiff's "Second Request for Admissions," contained in Motion for Protective Order filed April 24, 2000, as quoted in Plaintiff Edward J. Herrman's Brief in Support of Motion for Summary Judgment, filed August 4, 2000).

This should be compared to Movant's testimony in United States District Court, P 26 of transcript, P. 416 Exhibits, Herrman v. Cohen Motion for Summary Judgment filed August 4, 2000, and here incorporated:

(reprint of transcript testimony of Cohen as referenced in Brief)

Q. Did there come a time that you did talk to some individual that you recall?

A. I did talk to a man by the name of Ivan Kerr. I'm

pretty sure that is his correct name.

Q. And did you talk to him?

A. Well, he called me in Thomasville and he was distraught that his time period had run out, they wouldn't extend it. They wouldn't give him back his money, this, that and the other.

And he told me he was going to call the FBI. I said: You can call the FBI, but I don't have any money and I can't give it back to you. And that was about the extent of that conversation.

Q. Had his money, in fact, been deposited, the up front fees that he had, had that money gone through your escrow account?

A. I assumed that it had. He wouldn't have called me had it not.

Q. Do you know how Mr. Kerr found out your number?

(end of reprint of transcript exhibit)

In April, Cohen swore no contact with Kerr. In June, contact is recalled. In August, contact evaporates.

CONCLUSION

For purposes of instant Motion a material fact exists as to which time Mr. Cohen is accurate.

Motion for Summary Judgment should be denied.

Respectfully submitted this 21st. day of September 2000.

Arthur J. Shelfer, Jr.

Attorney for Plaintiff

(reprint of court document) *Appendix "C"*

IN THE SUPERIOR COURT

COUNTY OF THOMAS

STATE OF GEORGIA

Ivan Kerr, *Plaintiff* Civil Action File No:

99-CV-1188

v.

Ronald A. Cohen, et. al., *Defendant*

ORDER ON DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

The defendant filed a Motion for Summary Judgment in the above case.

This Court finds that the plaintiff had failed to show either conversion, fraud, or contract between the plaintiff Ivan Kerr and the defendant Ronald A. Cohen or R. Allen Cohen. This Court finds no genuine issue as to material facts, and finds that the defendant is therefore entitled to judgment in his favor.

Accordingly, the defendant's Motion for Summary

Judgment is GRANTED on each and every ground and judgment is entered in favor of the defendant as to the claims of Ivan Kerr.

So ORDERED this 12th day of May, 2000.

John S. Langford, Senior Judge
Superior Courts, State of Georgia
Sitting by Designation in the
Superior Court of Thomas County

(reprint of court document) *Appendix "D"*

IN THE COURT OF APPEALS

STATE OF GEORGIA

Ivan Kerr, *Plaintiff* Court of Appeals Docket

v. #A01A0941

Ronnie Cohen, a/k/a

Ronald Alan Cohen, et.al, *Defendant*

STATEMENT OF FACTS

The case before this Court is suit filed, grounded in law and equity, by a victim of a fraudulent advance fee operation against one of the perpetrators of the fraud who the victim was able to identify early on.

It is the second, chronologically, of three such cases filed in Thomas County Superior Court.[1]

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[1] William R. Austin v. Ronald A. Cohen, et.al., Thomas County Civil Action Number 99-CV-0249, filed March 10, 1999, and Court of Appeals Docket Number A01A1071; Kerr v. Cohen, Thomas County Civil Action Number 99-CV-1188, filed November 18, 1999, Court of Appeals Docket Number A01A0941; Herrman v. Cohen, Thomas County Civil Action No: 00-CV-0048, filed January 24, 2000, not yet docketed in Court of Appeals.

The response to the lawsuit was, generally, a denial of culpability, responsibility, and liability by the appellee (R 13), despite his indictment, arrest and subsequent guilty plea in United States District Court (R 26-31), (R 32-65).

A Motion for Summary Judgment was filed by Plaintiff early in the litigation, grounded primarily on United States and Georgia law of restitution and based upon appellee's admission of guilt and appellant's statements under oath as to his victimization (R 17). Upon denial of the Motion, (R 86), appellant commenced discovery in earnest, having responded to earlier discovery requested by appellee.

Defendant's responses to Requests for Admissions, Interrogatories, and Requests for Production of Documents were, in summary, of no use. The Court ordered compliance on May 3, 2000 (R117), at the same time ordering a More Definite Statement from appellant. Appellant complied; appellee did not.

ENUMERATIONS OF ERRORS

I. The trial court abused discretion in failing to enforce its Order Compelling Discovery.

II. The trial court erred in failing to consider the law and evidence in awarding Summary Judgment to Defendant.

ARGUMENT AND CITATION OF AUTHORITY

I. The trial court abused discretion in failing to enforce its Order Compelling Discovery.

The record is replete with Appellant's discovery requests and Appellee's objections and, contrarily, devoid of complaints concerning appellant's responses.

Ultimately, the trial court ordered appellee's compliance, at least in part (R 117).

A "motion to Clarify Court Order and Motion for Extension of Time," filed by appellee (R 145) is all that is forthcoming, is not answered, and discovery still not produced.

Appellant received virtually no information useful in preparation for trial.

II. The trial court erred in failing to consider the law and evidence in awarding Summary Judgment to Defendant.

Review of the entire record in this matter is warranted and urged. O.C.G.A. § 9-11-56 (c); *Lawson v. Duke Oil Co.*, 155 Ga. App.363 (1980), *Sumner v. First Union National Bank*, 200 Ga. App. 729 (1991).

Summary Judgment is an abbreviated trial of no less importance than any other trial on the merits *Davidson Mineral Properties, Inc. v Gifford-Hill and Co.*, 235 Ga. App. 176 (1975). Appellant's challenge in preparing for trial was not adequacy of evidence but avoidance of redundancy. Where a question of credibility arises as to a material issue, Summary Judgment should not be granted *Ash v. Spear*, 137 Ga. App. 12 (1975). One such question here is whether there was contact between appellant and appellee.

Summary Judgment is an extreme remedy and

should be awarded only when truth is quite clear. *Watkins v. Nationwide Mutual Fire Insurance Co.*, 133 Ga. App. 801 (1966).

Attempts to learn the truth through legitimate discovery process here failed; under the circumstances, the truth has been hidden and is therefore, to and extent, unknown.

CONCLUSION

The ruling of the trail court indicates that a jury could not find an individual who admits to fraud could be held liable for damages to one of the victims.

Reversal is warranted.

Respectfully submitted this 26th day of January 2001.

Arthur J. Shelfer, Jr.

Attorney for Appellant

(Reprint from court documents) *Appendix "E"*

IN THE COURT OF APPEALS

STATE OF GEORGIA

Ivan Kerr, *Appellant*

v. Court of Appeals Case No.

A01A0941

Ronnie Cohen, et.al., *Appellee*

APPELLANT'S RESPONSE BRIEF

Title 18 United States Code § 3664, "Procedure for issuance and enforcement of Order of Restitution."

"A conviction of a Defendant for an offense involving the act giving rise to an order of restitution shall estop the Defendant from denying the essential allegations of that offense in any subsequent Federal or **State Civil proceeding** (emphasis added), to the extent consistent with State law, brought by a victim." Title 18 United States Code § 3664 (l).

Title 18 United States Code § 3663 (a) Mandatory Restitution to Victims of Certain Crimes."

Title 18 United States Code § 3663 (A) (c) 1 (A) ii

(in pertinent part) "any offense (A) that is (ii) an offense against property under this title, including any offense committed by fraud or deceit..."

Appellee entered a guilty plea on January 21, 1999 to Title 18 United States Code § 1343, 1856 (h) and § 2.

At no time below does the appellee contradict this statute by either argument or authority, and the concept was not addressed by the Trial Court.

CONCLUSION

Mr. Cohen is guilty by his own admission of fraud under Title 18 United States Code § 1343, 1856 (h), and § 2, and should be judged in any Civil proceeding accordingly. Failure to apply the law is erroneous.

Consideration by this Honorable Court is requested.

Respectfully submitted this 26th day of February 2001.

Arthur J. Shelfer, Jr.

Attorney for Appellant

(Reprint of court document) *Appendix "F"*

SECOND DIVISION

ANDREWS, P.J., ELDRIDGE AND MILLER, J.J.

April 10, 2001

IN THE COURT OF APPEALS OF GEORGIA

A01A0941. KERR v. COHEN. EL-044C

ELDRIDGE, Judge.

On March 24, 1998, appellee-defendant, Ronnie Cohen a/k/a Ronal Allen Cohen, Ronald Cohen, R. Allan Cohen (Cohen"), Robert Ian Newman, Arthur W. Householder, a/k/a Art Householder, Jack Allenbach, Georgia Riger, Earl Ferrell, Orin Utterbach ("Householder"), Jerrell Breslin, David W. Rogers, Robert Petrie, Jessica Jasmin Maun, a/k/a Jessica Santos (Maun"), and Barry Lichtman were indicted upon the charge of conspiracy to conduct financial transactions knowing that the funds involved therein represented the proceeds of wire fraud in violation of 18 U.S.C. § 1343 and knowing that the transactions were carried out with the intent to further and promote such unlawful activity

in violation of 18 U.S.C.§ 1956. Following a hearing on January 21, 1999, the United States District Court for the Northern District of Florida accepted Cohen's plea of guilty to the charge. The case was heard in the district court on June 21 and 22, 2000.

This appeal arises out of the superior court's grant of summary judgment to Cohen, upon a verified complaint, filed on November 18, 1999, by appellant-plaintiff Ivan Kerr averring conversion, fraud, and an action to set aside contract. Cohen timely filed his answer and counterclaim denying the allegations of the complaint and seeking his court costs, attorney fees and damages upon Kerr's claims as false. By separate orders executed on March 6, 2000 and May 5, 2000, respectively, the superior court denied Kerr's motion for summary judgment and granted Cohen's motion for more definite statement of the complaint. One May 18, 2000, Kerr filed his verified amendment to complaint and response to the superior court's order on motion for more definite statement.

Kerr first filed the instant appeal in the Supreme Court of Georgia. The Supreme Court transferred the appeal to this Court because the underlying issues of conversion, fraud, and whether a contract existed between the parties presented questions of law, not equity. See Redfearn v. Huntcliff Homes Ass'n., 271 Ga. 745 (524 SE2d 464) (1999). In the instant appeal, Kerr contends that the superior court erred: (a) in granting Cohen summary judgment since jury questions remain as to each count of his amended complaint, and (b) in failing to enforce its order compelling discovery before ruling upon Cohen's motion for summary judgment. Finding these claims of error to be without merit, we affirm.

1. The superior court did not err in granting Cohen summary judgment as to each of his claims.

On a motion for summary judgment under OCGA § 9-11-56, the moving party may prevail by (1) presenting evidence which negates an essential element of the plaintiff's claims, or (2) showing an

absence of evidence to support the case as to any essential element. *Caven v. Warehouse Home Furnishings Distrib.*, 209 Ga. App. 706 (434 SE2d 532) (1993). If the moving party discharges this burden, the nonmoving party cannot rest on its pleadings, but rather must point to specific evidence giving rise to a triable issue. OCGA § 9-11-56 (e). *Speir v. Kreiger*, 235 Ga. App. 392, 397 (2) (509 SE2d 684) (1998).

(a) Conversion. At common law actions for trover for conversion related only to tangible things so that an action for conversion as to money would lie only as to "withholding specific bills or coins and does not lie on account of a mere failure to pay money under a contract." *Mack v. Nationwide Mutual Fire Ins. Co.*, 238 Ga. App. 149, 150 (517 SE2d 839) (1999), citing *Faircloth v. A.L. Williams & Assoc.*, 206 Ga. App.764, 766-767 (426 SE2d 601) (1992); *Hodgskin v. Markatron, Inc.*, 185 Ga. App. 750,

751 (l) (365 SE2d 494) (1988). Money other than specific metal or paper representing money is not tangible property.[1] *Mack v. Nationwide Mutual Fire Ins. Co.*, supra at 151. Kerr does not here seek the recovery of specific money to which he had title either in bills or coins. Rather, he seeks to recover a sum of money in the general sense. The record shows that he offered no evidence to the contrary in support of his conversion claim. Because a cause of action for conversion does not lie in the instant circumstances, the superior court did not err in granting Cohen summary judgment on this count. See *Cooke v. Bryant,* 103 Ga. 727, (30 SE 435) (1898) ("Trover lies for the conversion of money, when there is an obligation on the part of the defendant to return specific coin or notes entrusted to [one's] care.' [Cit.]").

[1]Tangible things and monetary value are well distinguished in *Vaughn v. Wright,* 139 Ga. 736 (78 SE 123) (1913).

(b)Fraud. To establish the tort of fraud, Kerr was required to show: (1) a false representation; (2) scienter; (3) intent to induce plaintiff to act or refrain from acting thereon; (4) justifiable reliance by plaintiff; and (5) proximate damage to the plaintiff. *Scarbrough v. Hallam*, 240 GA. App 829, 832 (3) (525 SE2d 377) (1999); *Vester v. Mug A Bug Pest Control, Inc.*, 231 Ga. App. 644,646 (l) (a) (500 SE2d 406) (1998), *Mug A Bug Pest Control v. Vester*, 270 Ga 470 (509 SE2d 925) (1999); *Lister v. Scriver*, 216 Ga. App. 741, 745 (456 SE2d 83) (1995); *Parsells v. Orkin Exterminating Co. Inc.*, 172 Ga. App. 74, 75 (322 SE2d 91) (1984). In response to Cohen's motion for summary judgment, Kerr filed the transcript of his testimony in federal court against Cohen' co-conspirators, having earlier tendered the transcript of Cohen's guilty plea hearing in support of his motion for summary judgment and his amended verified complaint. Pertinently, the evidence shows that in order to

initiate a transaction to obtain venture capital, the co-conspirators required their clients to transmit fees of fifty thousand to two million dollars to an escrow agent at an offshore bank for the purpose of syndicating investors. Such fees were to be held in escrow until clients provided a bank payment guarantee or irrevocable letter of credit guaranteeing their fees. Typically, receipt of this guarantee was required within five to seven days, and failure to provide it resulted in the forfeiture of such fees as had been paid. In reality, the co-conspirators lacked access to the venture capital they held themselves out as having, and they designed their operation with a view to causing clients to forfeit the fees they had paid and divided these among themselves upon an agreed schedule.

In May 1995, Kerr received a letter from co-conspirator Householder offering him venture capital through an organization Householder referred to as the Centurion Group. Kerr responded the following month, indicating that he needed one and a half to two million

dollars to expand his factoring and freight brokerage businesses, businesses he described as very successful, growing rapidly, and worth three to six million dollars. Householder responded, guaranteeing Kerr funding in the amount of five million dollars upon the payment of a retainer fee of $10,000 to the group's escrow agent and an additional five percent charge on the funding he was to provide. Householder also required that Kerr provide his escrow agent a copy of a cahier's check, bank payment guarantee, or irrevocable letter of credit in the amount of his fee.

Kerr paid the $10,000 fee on a second visit to Householder's office. At that time, Householder told Kerr that he had earlier declined to provide Kerr with references, citing a confidentiality agreement with his clients while assuring him that he would nonetheless be comfortable with their names.

In early August of 1995, Householder learned that Kerr was past due on a $150,000 line and operating account at his bank. Later that month, Kerr went to the

bank seeking a letter of credit covering Householder's fees on the transaction. There, Kerr saw a loan officer who refused him saying "It looks like a drug deal." On August 24, 1995, Kerr, through his vice president, wrote Householder seeking a refund of the retainer fee he had paid and withdrew from the transaction. He also stated, however, that he would reapply at a later time. Thereafter, rather than exploring getting a Small Business Administration loan or pursuing other options, Kerr consulted an attorney to assist him in resolving the problem of his past due account at the bank. Kerr's attorney likewise advised him not to further pursue venture capital financing.

On September 26, 1995, Kerr received a memorandum from another investment group. The memorandum, authored by co-conspirator Maun, offered to provide Kerr the venture capital Kerr needed through co-conspirator Newman, a man described as more experienced in syndicating venture capital than Householder. Although his attorney and his banker had

indicated it was not a good idea, Kerr entered into negotiations with Newman for funding, ultimately wiring $100,000 to Cohen as Newman's escrow agent and $13,500 to a Dennis McGregor who was to provide a bank letter of credit backing the $100,000 sent Newman. When the letter of credit was not forthcoming, Kerr paid an insurance company $50,000 and an additional $45,000 to Newman seeking the credit he needed to keep the transaction alive.

Kerr testified that although he was familiar with McGregor's name, he never met him in person. In this regard, Kerr recalled that he was told that McGregor would provide him the bank credit he needed to cover Householder's fees for getting him venture capital. On cross-examination, Kerr testified that he nevertheless wired $100,000 to Cohen upon Newman's representation that McGregor would vouch for him.

Kerr's amended verified complaint showed that in the Spring of 1996, Newman's group advised him that his funds had been forfeited for his failure to obtain the

credit necessary to secure the $100,000 he wired Cohen. Newman demanded the payment of an additional $75,000 in order to proceed with the transaction, a portion of which Kerr paid, but these further efforts to obtain venture capital also failed. Kerr put his losses at "between 250 and $300,000[,]" forcing one of his businesses to go into bankruptcy.

We conclude that the foregoing evidence was sufficient to raise jury questions as to each of the elements of fraud, except that requiring Kerr to show that he justifiably acted, relying upon Cohen's representations or representations made on Cohen's behalf. The evidence showed that plaintiff had ignored warnings by both his banker and lawyer about the nature of the transaction, and there is no evidence that he exercised reasonable care to investigate before paying over such sums. Kerr having failed to come forward with evidence demonstrating a triable issue on this element of fraud, the grant of summary to Cohen was proper on Kerr's fraud claim. *Speir v Kreiger*, supra at

397.

(c) Contract. Cohen supported his motion for summary judgment by his own affidavit wherein he stated, as he had by his counterclaim, "I have never entered into any contract with Mr. Kerr, either oral or written."

A contract is an agreement between two or more parties for the doing or not doing of some specified thing, [OCGA § 13-3-1] and to constitute a valid contract there must be a subject matter upon which it can operate. [OCGA § 13-3-1]. In order that it may allege an agreement a [complaint] must set forth a contract of such certainty and completeness that either party may have a right of action upon it[Cit.].

Peachtree Medical Bldg., Inc., v. Keel, 107 Ga. App. 438, 439-440 (130 SE2d530) (1963). Kerr supports his contract claim by his verified complaint alone. However, inasmuch as Kerr provides no factual basis in support thereof, his complaint is conclusory in this regard and insufficient to avoid summary judgment. See

Harrison v. Harrison, 159 Ga. App 578 (284 SE2d 83) (1981) ("Verified pleadings have been held to be equivalent to a supporting or opposing affidavit for purposes of raising an issue of fact on summary judgment.[Cit.]"); see also *Vanacore v. Citizens Bank*, 228 Ga. App. 87, 88 (491 SE2d 181) (1997) ("Where no factual basis is provided for an averment appearing in an affidavit, it may be deemed conclusory and will not be sufficient to avoid summary judgment. [Cit.]"). Having failed to show this fundamental requisite to an enforceable contract by his complaint or in response to Cohen's motion for summary judgment, the superior court did not err in granting Cohen summary judgment on Kerr's contract claim. OCGA § 13-3-1; *Speir v. Kreiger*, supra at 397. At best, Kerr established only his efforts at contract formation but never established a contract with definite essential terms, whether express or implied, i.e., the nature of the capital contribution, form of the contribution, when contribution would be made and by whom as well as the role of the defendant.

Even if the superior court erred in rendering its order on Cohen's summary judgment motion without enforcing its order compelling discovery (and we find no error), such error would have been harmless. The materials sought – a copy of Cohen's petition for voluntary disbarment, a copy of all responses from the Georgia Bar, including Cohen's disbarment, a list of Cohen's victims, his co-conspirators, his aliases, his social security number, income and real estate information, and a listing of persons to whom Cohen transferred in excess of $100 since May 1997- were immaterial under the circumstances of this case. *Kramer v. Kroger Co.*, 243 Ga. App. 883, 889 (4) (534SE2d 446) (2000).

Judgment affirmed. Andrews, P.J. and Miller, J., concur.

IN THE COURT OF APPEALS *Appendix "G"*

STATE OF GEORGIA

Court of Appeals Case No. A01A0941

Ivan Kerr, *Appellant,*

v.

Ronnie Cohen, et.al., *Appellee.*

MOTION FOR RECONSIDERATION

Comes now Ivan Kerr and, pursuant to Rule 37 of the Rules of the Court of Appeals of the State of Georgia, brings this his Motion for Reconsideration regarding this Court's opinion in the above-captioned case, affirming the trial court's decision in the matter.

BASIS FOR GRANTING MOTION FOR RECONSIDERATION

Pursuant to Rule 37 (e) of the Rules of the Court of Appeals of the State of Georgia, Appellant respectfully submits that this Court, in rendering it's opinion affirming the decision of the trial court,

(1) has overlooked controlling United States law, to wit:

" A conviction of a Defendant for an offense involving the act giving rise to an order of restitution shall estop the Defendant from denying the essential allegations of that offense in any subsequent Federal Civil proceeding or **State Civil proceeding** (emphasis added), to the extent consistent with State law, brought by the victim." Title 18, United States Code § 3664 (l), (R 21, Appellant's Response Brief). (2) has overlooked material facts of record: (a) documentation of Appellant Kerr's contacts with Cohen et.al., was not available at the time of the Motion and Order appealed from, which would show the justifiable reliance on the representations of appellee by appellant. (R 173), (R 196). (b) considerable documentation was reviewed in the United States

District Court file and summarized, not as evidence, but as examples of available evidence, by counsel. (R123-131), specifically R 130). (c) appellee admits during testimony in United States District Court to a telephone conversation with appellant. (R 157) yet denies any conversations in instant Motion (R 170) and an affidavit (R 175). (d) appellant's testimony alone took two days (this Court's opinion, P2 Line2) of an approximate eight week trial. (e) appellant, under oath, explains the lack of viability of a Small Business Administration loan (R 231, 232). (f) appellant, under oath, testifies as to a contract with co-conspirator Householder (R 243, Lines 1-3). (g) appellant dealt with "a number of attorneys." One advised against the transaction. "R. Allen Cohen" recommended it. (h) appellant explains for consideration by the federal jury his justifiable reliance on the bona fides of the scheme.

(R 255).

Appellant respectfully requests that this Court inquire into and reconsider its opinion affirming the trial courts decision.

Respectfully submitted this 18th day of April, 2001.

Arthur J. Shelfer, Jr.

Attorney for Appellant

Appendix "H"

COURT OF APPEALS OF THE STATE OF GEORGIA

ATLANTA, APRIL 26, 2001

The Court of Appeals hereby passes the following order:

Case No. A01A0941

IVAN KERR V. RONNIE COHEN

Upon consideration of the motion for reconsideration filed in this case, it is ordered that it be hereby denied.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

(Date stamped April 26, 2001)

I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written. Clerk (signature followed)

Appendix "I"

SUPREME COURT OF THE STATE OF GEORGIA

CLERK'S OFFICE

ATLANTA

DATE: September 7, 2001

Arthur J. Shelfer, Jr.

POB 2295

Thomasville, GA 31799-2295

CASE NO: S01C1261

Ivan Kerr v. Ronnie Cohen

COURT OF APPEALS CASE NO: A01A0941

The Supreme Court today denied the petition for certiorari in this case.

All the Justices concur

Sherie M. Welch, Clerk

APPENDIX J

(Pertinent text of Title 18 U.S.C. § 3663 A (a)(2)

"For the purposes of this section, the term "victim" means a person directly and proximately harmed as a result of the commission of an offense for which restitution may be ordered including, in the case of an offense that involves as an element a scheme, conspiracy, or pattern of criminal activity, and any person directly harmed by the defendant's criminal conduct in the course of the scheme, conspiracy, or pattern."

APPENDIX K

(Pertinent text of Title 18 U.S.C.§ 3663 (A)(c)1 (A)ii)

"This section shall apply to all sentencing proceedings for convictions of, or plea agreements relating to charges for, any offense…

"That is …

"an offense against property under this title, including any offense committed by fraud or deceit…"

APPENDIX L

(Pertinent text of Title 18 U.S.C.§ 3664 (l)

"A conviction of a defendant for an offense involving the act giving rise to an order of restitution shall estop the defendant from denying the essential allegations of that offense in any subsequent Federal civil proceeding or State civil proceeding, to the extent consistent with State law, brought by the victim."

Supreme Court, U.S.
FILED
FEB 5 2002
CLERK

(2)

No. 01-1016

In The

Supreme Court of the United States

IVAN KERR,

Petitioner,

v.

RONNIE COHEN, A/K/A RONALD ALAN COHEN, RONALD ALLEN COHEN, R. ALLAN COHEN,

Respondent.

On Petition For Writ Of Certiorari To The Court Of Appeals For The State Of Georgia

RESPONDENT RONNIE COHEN'S BRIEF IN OPPOSITION

J. CONVERSE BRIGHT
Counsel of Record
Counsel for Ronnie Cohen
101 East Central Avenue
Valdosta, Georgia 31601
(229) 247-7846

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

3698

QUESTION PRESENTED

The petition states the question presented as:

> "Whether dissociation of Georgia Courts from 18 U.S.C. 3664(l), which provides that a Defendant convicted of a restitution-qualified offense shall be estopped from denying the essentials of that offense in any state civil proceeding brought by a victim, violates the Supremacy Clause of the United States Constitution."

This issue is not properly presented because it was not presented in the courts below.

The petition misstates the issue and the case.

TABLE OF CONTENTS

Page

QUESTION PRESENTED..... i

TABLE OF AUTHORITIES..... iii

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI..... 1

STATEMENT OF THE CASE..... 1

ARGUMENT..... 2

I. THE CASE WAS DECIDED BELOW ON PRINCIPLES OF GEORGIA LAW, AND THE ISSUE PRESENTED BY THE PETITIONER WAS NOT DEALT WITH IN THE COURTS BELOW NOR WAS IT NECESSARY TO A DECISION IN THE GEORGIA COURTS..... 2

II. 18 U.S.C. § 3664(l) IS NOT APPLICABLE IN THIS CASE BECAUSE NO RESTITUTION ORDER WAS ENTERED..... 4

CONCLUSION..... 5

INDEX TO APPENDICES

APPENDIX A.....App. 1

APPENDIX B.....App. 12

APPENDIX C.....App. 19

TABLE OF AUTHORITIES

Page

CASES

Braxton v. U.S., 500 U.S. 344, 114 L.Ed. 2d 385, 111 S. Ct. 1854 (1991) 5

STATUTES

18 U.S.C. § 1343 1

18 U.S.C. § 1956(h) 1

18 U.S.C. § 3664 ..... 1, 2, 3, 4

18 U.S.C. § 3664(l) 4

RULES

Supreme Court Rule 10 5

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Ronnie Cohen, a/k/a Ronald Alan Cohen, Ronald Allen Cohen, R. Allan Cohen respectfully submits that this case does not present an issue under the Supremacy Clause of the United States Constitution, nor does it present any other important federal question or matter of federal law. The petition for Writ of Certiorari, presenting no valid grounds for review, should be denied.

STATEMENT OF THE CASE

The facts of the case are well set forth in the opinion of the Court of Appeals of Georgia. Pet. App. at 1a.

Ronnie Cohen was convicted in the Northern District of Florida on a plea of guilty *(App. C, App. 19)* of Conspiracy to Launder Monetary Instruments in violation of 18 U.S.C. § 1956(h). The underlying offense was Wire Fraud in violation of 18 U.S.C. § 1343.

Ivan Kerr sued Cohen in a Georgia Superior Court on the grounds of: (1) conversion; (2) fraud; and (3) contract.

The trial court denied Kerr's Motion for Summary Judgment. Pet. App. at 1a. The Court granted Cohen's Motion for Summary Judgment and Kerr appealed to the Georgia Court of Appeals. The only grounds for appeal mentioned in Kerr's initial brief in the Court of Appeals were (1) a ruling on an Order compelling discovery, and (2) the grant of Summary Judgment. No mention was made in the appellant's initial brief of 18 U.S.C § 3664. Pet. App. at 10a-14a. Petitioner did mention the statute in

his response brief in the Georgia Court of Appeals, but did not relate it in any way to the facts of the case or argue its applicability. Indeed the response brief acknowledged that the issue of 18 U.S.C. § 3664 was not addressed by the trial court. Pet. App. at 16a.

The Georgia Court of Appeals affirmed the grant of summary judgment to Cohen based upon principles of Georgia law which had nothing to do with the fact of Cohen's admission by plea of guilty to the fact of the fraud.

The Supreme Court of Georgia denied certiorari. Pet. App. at 36a.

ARGUMENT

I. THE CASE WAS DECIDED BELOW ON PRINCIPLES OF GEORGIA LAW, AND THE ISSUE PRESENTED BY THE PETITIONER WAS NOT DEALT WITH IN THE COURTS BELOW NOR WAS IT NECESSARY TO A DECISION IN THE GEORGIA COURTS.

Kerr sued Cohen, claiming that he was an investor who had been defrauded by Cohen and his co-defendants. He sued on three grounds: (a) conversion; (b) fraud; (c) contract. The trial court granted summary judgment to the defendant Cohen.

The Georgia Court of Appeals affirmed, based solely upon an analysis under Georgia law. The Court of Appeals held that summary judgment was proper as to the conversion count because Kerr was suing for money

which he claimed he had lost, while under Georgia law an action for conversion lies only to recover tangible property, not money.

The Court of Appeals held that summary judgment was properly entered on the fraud claim because the facts showed that Kerr ignored warnings from his banker and his lawyer about the transaction and that therefore there was no evidence to establish that he justifiably relied upon alleged fraudulent representation. Under Georgia law justifiable reliance upon a misrepresentation is an essential element of an action for fraud. Pet. App. at 27a.

The Court of Appeals found that Kerr failed to establish any contract between himself and Cohen with definite essential terms, which is a necessary element under Georgia law for maintenance of an action of breech of contract. Summary judgment was therefore properly granted on the contract claim.

The grant of summary judgment was affirmed solely on established principles of Georgia law and upon the failure of Kerr to present a claim which included factual issues for jury consideration.

The issue which petitioner Kerr now claims to present in this court was not presented in the trial court or in Kerr's initial brief to the Georgia Court of Appeals. The issue was not dealt with by the Georgia Court of Appeals. Kerr lost in Georgia courts because the claim that he presented lacked essential elements under Georgia law.

Petitioner Kerr now pretends that the Georgia courts have ignored or dissociated from 18 U.S.C. § 3664. That assertion is not supported by the record. Kerr did not

properly present the issue to the Georgia courts. The issue was not essential to nor even relevant to the Georgia court's analysis and was not dealt with by the Georgia courts.

The bottom line of Kerr's complaint by this petition is his assertion that Cohen, by entering a plea of guilty, under 18 U.S.C. § 3664 is estopped from denying the essentials of the offense to which he pled guilty. But, Cohen's guilt or innocence of fraud was no part of the Georgia courts decision. Kerr did not lose his case in the Georgia courts because the court failed to be guided by 18 U.S.C. § 3664. Kerr lost his case in the Georgia courts because he failed in each of three counts to establish all of the essential elements of each claim. None of these essential elements related to an acknowledgment of, or application of, Cohen's guilty plea.

Although the Court did not deal with Cohen's guilty plea, because the issue was not raised there, the opinion and the result would have been the same had the Court acknowledged the guilty plea, because Kerr lost his case for other reasons.

II. 18 U.S.C. § 3664(l) IS NOT APPLICABLE IN THIS CASE BECAUSE NO RESTITUTION ORDER WAS ENTERED.

18 U.S.C. § 3664(l) provides that a conviction "for an offense involving the act giving rise to an order of restitution shall estop the defendant from denying the essential allegations of that offense. . . . " Pet. App. at 39a.

The operative phrase here is "order of restitution".

The judgment of conviction in this case entered no order of restitution. Rather, the judgment expressly states:

"No restitution imposed." *App. C, App. 25.*

The gist of Kerr's complaint is that the Georgia courts did not properly interpret or apply the order of restitution in the criminal case. Not only was no order of restitution entered, but the court expressly declined to enter an order of restitution.

Kerr's point seems to be that the Georgia courts did not lend proper credence to an order of restitution that did not exist.

The principal purpose of the Writ of Certiorari is to resolve conflicts among Circuit Courts of Appeals and state courts concerning the meaning of provisions of federal law. Supreme Court Rule 10, *Braxton v. U.S.*, 500 U.S. 344, 114 L.Ed. 2d 385, 111 S. Ct. 1854 (1991). This petition presents no conflict in interpretation of federal law, and indeed no question of federal law.

CONCLUSION

The Petition fails to demonstrate any valid ground for review of the decision below, and should be denied.

Respectfully submitted,

J. Converse Bright
Counsel for Ronnie Cohen
101 East Central Avenue
Valdosta, Georgia 31601
(229) 247-7846

INDEX TO APPENDICES

APPENDIX A

(Amended Complaint) .....App. 1

APPENDIX B

(Indictment) .....App. 12

APPENDIX C

(Judgment of Conviction) .....App. 19

APPENDIX A

IN THE SUPERIOR COURT
COUNTY OF THOMAS
STATE OF GEORGIA

IVAN KERR,	*	
	*	
Plaintiff,	*	**CIVIL ACTION**
	*	**NO: 99-CV-1188**
v.	*	
	*	
RONNIE COHEN, A/k/a	*	
RONALD ALAN COHEN,	*	
RONALD ALLEN COHEN,	*	
RONALD COHEN,	*	
R. ALLAN COHEN,	*	
	*	
Defendant.	*	

AMENDMENT TO COMPLAINT
RESPONSE TO ORDER ON
MOTION FOR MORE DEFINITE STATEMENT

(Filed May 18, 2000)

COMES NOW Ivan Kerr, Plaintiff herein, and files this his response to the Courts order on *Motion for More Definite Statement*.

1.

Ivan Kerr is a 52 year old native of Texas. He currently resides with his parents in Pennsylvania, and works for Greyline Tours in New York. Prior to the events giving rise to instant complaint, he was owner of a factoring business, engaged in the process of organizing shipping and routing plans for freight nationwide.

Mr. Kerr was the victim of the *scam* perpetrated by Cohen and others stemming from an agreement to provide *venture capital* after a substantial amount of money was paid by Mr. Kerr.

2.

Various documents generated in connection with the "scam" bore the letterhead or signature "R. Allan Cohen." Cohen heretofore invariably used the name "Ronald A. Cohen" or "Ronnie Cohen." The documents were generated either by Cohen's secretary in his Coolidge "office" or by Cohen as a lackey for his co-defendants in the criminal conspiracy.

An example of such documents includes one that specifies nine steps that are to be completed by an individual seeking the formation of an Antiguan corporation.

> *Step number four indicates that an unspecified amount of U.S. dollars must be wire transferred to CARIBBEAN AMERICAN BANK at the following coordinates to initiate the procedure: Privat Kredit Bank via Pretorio 22 Casella Postal Ch-6901 Lugano Switzerland for further credit to American International Bank, account number 1.4.91574 USA, for further credit to CARIBBEAN AMERICAN BANK, ACCOUNT NUMBER 010-000-216. Step five of this document states: "Once your wire transfer has been verified as received by CARIBBEAN AMERICAN BANK we will process a name reservation for one of three choices given by you herein. Once that has been perfected we will advise you of and forward to you signature cards for your account in CARIBBEAN AMERICAN BANK and advise you as to the account number therein".*

Section six advises: "Please fax this completed request to CARIBBEAN AMERICAN BANK attorney, R. Allan Cohen, at (912)-346-9433." (912)-346-9433 was the telephone number utilized at SALLY'S SERVICES located in Coolidge, Georgia the site of Cohen's secret office. Step number seven states: "Please fax a copy of the wire transfer to attorney R. Allen Cohen at the fax number above (912)-346-9433.

3.

Cohen was one of a group of individuals including Larry Sangaree, Gerald Breslin, Les Merske, Donald Jake Gamble, Peter Albert Barnum and *others* who were involved in a highly-organized scheme which had the objective of identifying and recruiting clients who needed multi-million dollar amounts of capital for a variety of business projects and investments.

To initiate the transaction, clients were required to transmit fees of from $50,000 to two million to an attorney or bank escrow account usually at an offshore bank for purpose of syndicating investors.

These funds were to be held in escrow until the terms of the *contract* were met. The *contract* then required that clients provide the group with a strict bank payment guarantee or an irrevocable letter of credit for the group's profit on the transactions, usually 20 percent of the total capital and amounting to several million dollars on most deals.

This guarantee was to be produced within five to seven days on most transactions, and was required prior to any funds being provided to the client.

If the client could not produce the required guarantee within the stated time frame, then the original fee would be forfeited. In reality, the group did not have access to the capital required to fund any of those transactions, and in addition, the group's operations were specifically designed to go through the process in order to forfeit the original fee, which was then split up between members of the group according to an agreed upon schedule.

As far as has been determined at this point, *no* client ever received any funds from this group or for their venture capital investment.

4.

Specifically, as to Mr. Cohen, in the early 1990's, Ronald Cohen was a practicing attorney in Thomasville, Georgia, and was dating a woman by the name of Linda Luke who is the sister of Terri Sangaree. Through this ongoing social relationship, Mr. Cohen had become a close friend with Larry Sangaree and learned that Larry Sangaree had become involved in what appeared to Mr. Cohen to be a successful venture capital program.

In August of 1995, Larry Sangaree, Jake Gamble and others invited Mr. Cohen to join the group during a trip to Antigua. During this visit, Mr. Cohen was introduced to principals of the American International Bank, William Cooper and John Greaves, who managed the groups activities associated with the ***Caribbean American Bank in Antigua.***

Additionally, Mr. Cohen was advised that he would act as an escrow agent for funds forwarded to the group in Antigua by clients, and a trust account would be established in the off shore bank for that purpose.

Further, Mr. Cohen would be required to set up an office in the United States where calls and correspondence associated with the group's activities could be handled by a secretary.

Once he *agreed* to take on these duties, Mr. Gamble and Mr. Cooper set up an Antiguan corporation where Mr. Cohen would have his *personal income* from these services deposited.

The establishment of this corporation, which was **NILNOR S.A.**, also provided the mechanism for Cooper to issue Cohen a Visa credit card account, which would be paid by directly debiting the NILNOR account in Antigua.

Ultimately, Mr. Cohen was issued two Visa cards on this account. One was used personally by Mr. Cohen for various items and expenses, and the other was provided to Mr. Cohen's girlfriend, Linda Luke for her use.

After this visit, Mr. Cohen set up an office in Coolidge, Georgia, and eventually hired *Kathy Spurlin* as a secretary to handle day to day transactions and correspondence.

5.

In actuality, Mr. Cohen had very little contact with group's operations in the Coolidge location. Instead, his secretary, Kathy Spurlin, was instructed by Cohen to take

orders from Larry Sangaree who reviewed and dictated correspondence, directed fund transfers to other members of the group, handled the telephone contacts with irate victims and coordinated activities with Jake Gamble.

As a normal part of her duties, Kathy Spurlin handled the origination of foreign corporations for victims and members of the group. She also maintained records for the Caribbean American Bank, general ledger escrow, and NILNOR accounts, and issued escrow documents.

Additionally, Kathy Spurlin also issued form letters over Cohen's machine-generated signature verifying individual victims that millions of dollars were available to cover their transactions.

Mr. Cohen continued to allow Ms. Spurlin to operate the business using his name and signature at Sangaree's direction even after Larry Sangaree was incarcerated in February of 1997.

Ms. Spurlin, at Sangaree's direction and with Mr. Cohen's knowledge, used the *alias* Ilise B. Carson in dealing with clients of the business.

6.

In 1996, Mr. Cohen learned that a Georgia Bar Association regulation prohibited him from maintaining a trust account of the Caribbean American Bank or American International Bank. Up to that point, clients in the group had forwarded funds to Mr. Cohen's trust account in Antigua where he acted as the groups escrow agent.

Mr. Cohen informed Larry Sangaree and Jake Gamble of this development. Subsequently, it was decided that

Mr. Cohen would no longer be the escrow agent, but would represent the Caribbean American Bank, who would be the new escrow agent for the transactions.

Mr. Cohen still retained signature authority, usually exercised by Kathy Spurlin, over the escrow accounts to which clients sent funds.

Operations continued at the Coolidge, Georgia, office throughout the remainder of 1996 and early 1997 without a significant change in Mr. Cohen's role.

Although Mr. Cohen did not personally participate in transactions involving clients, a few individuals who had lost their money did manage to contact him or one of his partners at his regular business office in Thomasville, Georgia, to complain directly.

7.

Specifically as to Mr. Ivan Kerr, the events were as follows:

In approximately May of 1995, Mr. Kerr received a letter from a member of the *organization* offering capital services.

In that he was interested in obtaining capital for expansion of his factoring and freight brokerage business, he responded, expressing that interest.

Mr. Kerr was answered, in turn, with an explanation of a venture capital process referred to as ***"syndication."*** A group of individuals, in return for various payments in various amounts, offered a ***"money back guarantee"*** of requisite capital for Mr. Kerr's business expansion.

Due to the stated *risk* to the "syndicators" applicants (including Mr. Kerr) would be required, i.*a.*, *to furnish a copy of a cashiers' check payable to the syndicate's escrow agent,* who would hold the funds pending consummation of the transaction.

Mr. Kerr paid a portion of the fees, but ultimately became suspicious of the venture capital proposition and requested a refund.

The response was a refusal of the refund, noting that the syndicate had performed as required, and a draft agreement requiring a $100,000 payment to the account of their escrow attorney was required. He did not comply, and the syndication offer was withdrawn.

Yet another member of the *"investment group,"* however, contacted Mr. Kerr in September 1995, advising that he could be introduced to a more experienced syndicator. He was then sent information via facsimile concerning their escrow agent, ***"R. Allan Cohen"*** and a new *syndicator,* one Robert Newman.

Mr. Kerr re-qualified as required, which included the transmittal of a photocopy of the *$100,000 check made out to Cohen.*

Mr. Kerr subsequently completed the syndication agreement, wired the $100,000 to Mr. Cohen, and paid the fee.

Mr. Kerr continued efforts to complete the transactions to gain the needed capital for his business, into spring of 1996. At that time, a member of the organization advised him that his funds had been forfeited since he (Mr. Kerr) had failed to find a sponsor.

In May of 1996, an additional ***$75,000*** was demanded of Kerr for the transaction to proceed. A portion of this ***was paid,*** but the syndication again "failed."

None of Mr. Kerr's funds has been recovered; he was forced into bankruptcy.

WHEREFORE, Plaintiff, having furnished a MORE DEFINITE STATEMENT of his original complaint, prays that Defendant's response hereto be ordered in accordance with the Georgia Civil Practice Act.

This the 18th day of May 2000.

/s/ Arthur J. Shelfer, Jr.
Arthur J. Shelfer, Jr.
Attorney for Plaintiff
Ivan Kerr

IN THE SUPERIOR COURT
COUNTY OF THOMAS
STATE OF GEORGIA

IVAN KERR,	*	
	*	
Plaintiff,	*	**CIVIL ACTION**
v.	*	**NO: 99-CV-1188**
	*	
RONNIE COHEN, A/k/a	*	
RONALD ALAN COHEN,	*	
RONALD ALLEN COHEN,	*	
RONALD COHEN,	*	
R. ALLAN COHEN,	*	
	*	
Defendant.	*	

CERTIFICATION OF COUNSEL

COMES NOW the undersigned officer of the court, Counsel for the Plaintiff herein, and certifies that Plaintiff's Amendment, *Response to Order on Motion for More Definite Statement,* reciting particulars of my letter of April 24, 2000 to Judge John S. Langford, concerning this matter, was prepared from the following sources:

1. Information furnished by Mr. Ivan Kerr.
2. My personal review of sworn testimony and statements in the court file of *United States of America v. Ronald Alan Cohen, et al: Case No 1:98CR19MMP*

and is true and correct to the best of my knowledge and belief.

/s/ Arthur J. Shelfer
Arthur J. Shelfer, Jr.
Counsel for Plaintiff
Ivan Kerr

Sworn to and subscribed to before me
This 18th day of May 2000.

/s/ Janice H. Shelfer
Notary Public
Notary Public, Thomas County, Georgia
My Commission Expires Jan. 26, 2002

APPENDIX B

[1:98CR19MP]

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA GAINESVILLE DIVISION

UNITED STATES OF AMERICA,

v.

RONALD ALLAN COHEN,
a/k/a R. Allan Cohen, ROBERT IAN NEWMAN, ARTHUR W. HOUSEHOLDER,
a/k/a Art Householder,
a/k/a Jack Allenbach,
a/k/a George Riger,
a/k/a Earl Ferrell,
a/k/a Orin Utterbach,
JERRELL A. BRESLIN, DAVID W. V. ROGERS, ROBERT PETRIE, JESSICA JASMIN MAUN,
a/k/a Jessica Santos,
and
BARRY LICHTMAN

INDICTMENT

(Filed March 24, 1998)

THE GRAND JURY CHARGES:

COUNT ONE

That from on or about January 1, 1991, and continuing to the date of this indictment, in the Northern District of Florida and elsewhere, the defendants,

RONALD ALLAN COHEN,
a/k/a R. Allan Cohen,
ROBERT IAN NEWMAN,

ARTHUR W. HOUSEHOLDER
a/k/a Art Householder,
a/k/a Jack Allenbach,
a/k/a George Riger,
a/k/a Earl Ferrell,
a/k/a Orin Utterbach,
JERRELL A. BRESLIN,
DAVID W. V. ROGERS,
ROBERT PETRIE,
JESSICA JASMIN MAUN,
a/k/a Jessica Santos,
and
BARRY LICHTMAN

did knowingly and willfully combine, conspire, confederate, and agree with each other and with others, known and unknown to the Grand Jury, to conduct and cause to be conducted, financial transactions, knowing that the funds and monetary instruments involved in these transactions represented the proceeds of a specified unlawful activity, that is wire fraud, in violation of Title 18, United States Code, Section 1343, and knowing that the financial transactions were carried out with the intent to promote the carrying on of a specified unlawful activity.

OVERT ACTS

In furtherance of this conspiracy, the following overt acts, among others, were committed:

1. On or about June 30, 1992, **JERRELL A. BRESLIN** produced and signed a document with purported to verify that $7,000,000.00 in investment funding had been reserved for a project being developed by Harley Brown of Detroit, Michigan.

2. On or about March 31, 1993, **JERRELL A. BRESLIN** produced and signed a document which purported to verify that $5,001,600.00 in investment funding had been reserved for a project being developed by an individual identified as J. Patrick Shores of Duluth, Georgia.

3. On or about August 25, 1994, two wire transfers identified by Bank of America reference numbers C4237BF0996438 and C4237BF0996190 totaling approximately $200,000.00 were transferred at the direction of Donald Jake Gamble and Larry Sangaree from the American International Bank in St. Johns, Antigua, to the control of **ROBERT PETRIE**.

4. On or about August 25, 1994, two wire transfers identified by Bank of America reference numbers C4237BF0995726 and C4237BF0995362 totaling approximately 197,500.00 were transmitted at the direction of Donald Jake Gamble and Larry Sangaree from the American International Bank in St. Johns, Antigua, to the control of **DAVID ROGERS**.

5. On or about September 29, 1994, approximately 52,500.00 was transferred from the American International Bank in St. Johns, Antigua, to the control of **ROBERT IAN NEWMAN** in the United States.

6. On or about November 17, 1994, a wire transfer identified by Bank of America reference number C4321BP1105087 in the amount of approximately $10,000.00 was forwarded by the American International Bank in St. Johns, Antigua, to **BARRY LICHTMAN**.

7. On or about April 13, 1995, approximately $3,000.00 was transferred from the American International Bank in St. Johns, Antigua, to the control of **JESSICA JASMIN MAUN** in Gainesville, Florida.

8. On or about December 4, 1995, **ROBERT NEWMAN** caused Robert R. Neyland to wire transfer approximately $125,000.00 from a United States bank through the Privat Kredit Bank in Lugano, Switzerland, to an account controlled by **RONALD A. COHEN** located at the Caribbean American Bank in St. Johns, Antigua.

9. On or about December 12, 1995, **RONALD A. COHEN** forwarded a cashier's check in the amount of $95,000.00 from Coolidge, Georgia, to **RONALD COHEN'S** account at the Caribbean American Bank in St. Johns, Antigua.

10. On or about December 18, 1995, **ROBERT NEWMAN** caused Roger A. Lammers to wire transfer approximately $650,000.00 from NationsBank in Texas through the Privat Kredit Bank in Lugano, Switzerland to an account controlled by **RONALD A. COHEN** located at the Caribbean American Bank in St. Johns, Antigua.

11. On or about April 18, 1996, **BARRY LICHTMAN** executed and transmitted a document via facsimile to Michael Crow in Montgomery, Alabama, which purported to be a verification that **BARRY LICHTMAN** and Commercial Probability Corporation had reserved $13,000,000.00 for Crow's investment project.

12. On or about June 26, 1996, **ART HOUSEHOLDER** caused Dirck J. Hecking to wire transfer approxiamtely $250,000.00 from Sun Trust Bank in

Atlanta, Georgia, through the Private Kredit Bank in Lugano, Switzerland to an account controlled by **RONALD A. COHEN** located at the Caribbean American Bank in St. Johns, Antigua.

13. On or about July 11, 1996, at the direction of **RONALD COHEN**, The Caribbean American Bank generated four $1,000.00 checks made payable to **R. A. COHEN** and transmitted them to Coolidge, Georgia from St. Johns, Antigua, via Federal Express.

On or about September 8, 1997, **RONALD A. COHEN** caused a letter to be prepared and transmitted by facsimile from Coolidge, Georgia to Vere Bird, Jr., in St. Johns, Antigua, stating that **RONALD A. COHEN** had power of attorney over ten accounts which contained approximately $799,000.00 located at the Caribbean American Bank in St. Johns Antigua.

All in violation of Title 18, United States Code, Sections 1956(h) and 2.

COUNT TWO

The allegation contained in Count One of this Indictment is realleged and fully incorporated herein for the purpose of alleging forfeitures to the United States of America pursuant to Title 18, United States Code, Section 982(a)(1).

As a result of the offense alleged in Count One of this Indictment, defendants,

RONALD ALLAN COHEN,
a/k/a R. Allan Cohen,
ROBERT IAN NEWMAN,

ARTHUR W. HOUSEHOLDER
a/k/a Art Householder,
a/k/a Jack Allenbach,
a/k/a George Riger,
a/k/a Earl Ferrell,
a/k/a Orin Utterbach,
JERRELL A. BRESLIN,
DAVID W. V. ROGERS,
ROBERT PETRIE,
JESSICA JASMIN MAUN,
a/k/a Jessica Santos,
and
BARRY LICHTMAN

shall forfeit to the United States all property involved in such offense and any property traceable to such property, including but not limited to the following property:

a. All right, title, and interest in the funds and other assets remaining in and owned by the Caribbean American Bank, located at St. Johns, Antigua;

b. If the property described above is being subject to forfeiture, as a result of any act or omission of the defendants:

(1) cannot be located upon the exercise of due diligence;

(2) has been transferred or sold to, or deposited with a third person;

(3) has been placed beyond the jurisdiction of the Court;

(4) has been substantially diminished in value; or

(5) has been commingled with other property which cannot be subdivided without difficulty.

It is the intent of the United States, pursuant to Title 18, United States Code, Section 982(b)(1) to seek forfeiture of any other property of the defendants up to the value of the above forfeitable property.

All in violation of Title 18, United States Code, Section 982.

A TRUE BILL:

/s/ Kathleen Bloedman Black
FOREPERSON

3/24/98
DATE

/s/ P. Michael Patterson
P. MICHAEL PATTERSON
United States Attorney

/s/ Lyndia F. Padgett
LYNDIA F. PADGETT
Assistant United States Attorney

APPENDIX C

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION

UNITED STATES OF AMERICA

-vs-

RONALD ALLAN COHEN

Case #1:98cr19-001

Defendant's Attorney;
Samuel Jacobson
(Retained)
Jacksonville, FL

JUDGMENT IN A CRIMINAL CASE

(Filed April 27, 2001)

The defendant pled guilty to Count One of the Indictment on January 21, 1999. Accordingly, IT IS ORDERED that the defendant is adjudged guilty of such count(s) which involve(s) the following offense(s):

TITLE/ SECTION NUMBER	NATURE OF OFFENSE	DATE OFFENSE CONCLUDED	COUNT
18 USC 1956(h) and 2	Conspiracy to Launder Monetary Instruments	March 24, 1998	One

The defendant is sentenced as provided in the following pages of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984, including amendments effective subsequent to 1984, and the Sentencing Guidelines promulgated by the U.S. Sentencing Commission.

The defendant is subject to forfeiture as cited in count two of the indictment.

IT IS FURTHER ORDERED that the defendant shall notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs and special assessments imposed by this judgment are fully paid.

Defendant's Soc. Sec. No. 256-64-1613
Defendant's Date of Birth: 8/2/43
Deft's U.S. Marshal No.: 10905-017

Date of Imposition of Sentence:
April 25, 2001

Defendant's Residence Address:
453 Pig Sauls Road
Boston, Georgia 31162

Defendant's Mailing Address:
453 Pig Sauls Road
Boston, Georgia 31162

/s/ Maurice M. Paul
MAURICE M. PAUL, SENIOR
UNITED STATES
DISTRICT JUDGE

April 27, 2001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 121 months.

The defendant shall surrender to either the United States Marshal in Tallahassee Florida or to the institution designated by the Bureau of Prisons on May 25, 2001 no later than 12:00 noon.

RETURN

I have executed this judgment as follows:

_____

_____

_____

_____

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By: _____
Deputy U.S. Marshal

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 3 years.

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from custody of the Bureau of Prisons.

While on supervised release, the defendant shall not commit another federal, state or local crime and shall not possess a firearm, ammunition, or destructive device as defined in 18 U.S.C. § 921.

For offenses committed on or after September 13, 1994: The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to

one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as directed by the probation officer.

STANDARD CONDITIONS OF SUPERVISION

The defendant shall comply with the following standard conditions that have been adopted by this court.

1. The defendant shall not leave the judicial district without the permission of the court or probation officer;

2. The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month;

3. The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;

4. The defendant shall support his or her dependents and meet other family responsibilities;

5. The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;

6. The defendant shall notify the probation officer 10 days prior to any change in residence or employment, unless otherwise directed by the probation officer;

7. The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician;

8. The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;

9. The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;

10. The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;

11. The defendant shall notify the probation officer within 72 hours of being arrested or questioned by a law enforcement officer;

12. The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;

13. As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

14. If this judgment imposes a fine or restitution obligation, it shall be a condition of supervision that the defendant pay any such fine or restitution in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

ADDITIONAL CONDITIONS OF SUPERVISED RELEASE

The defendant shall also comply with the following additional conditions of supervised release:

The defendant shall not own or possess a firearm, dangerous weapon or destructive device.

The defendant shall provide all requested financial information to the probation office.

The defendant shall pay any unpaid financial obligation that remains outstanding at the commencement of the term of supervised release in equal monthly installments. Total sum to be paid prior to the end of his term of supervised release.

All criminal monetary penalty payments, except those payments made through the Bureau of Prisons' Inmate Financial Responsibility Program, are to be made to the Clerk, U.S. District Court, unless otherwise directed by the Court. Payments shall be made payable to the Clerk, U.S. District Court, and mailed to 111 N. Adams St., Suite 322, Tallahassee, FL 32301-7717. Payments can be made in the form of cash if paid in person.

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth in the Schedule of Payments. The defendant shall pay interest on any fine or restitution of more than $2,500, unless the fine or restitution is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options in the Schedule of Payments may be subject to penalties for default and delinquency pursuant to 18 U.S.C. § 3612(g).

SUMMARY

Special Monetary Assessment	Fine	Restitution
$100.00	$100,000.00	

SPECIAL MONETARY ASSESSMENT

A special monetary assessment of $100.00 is imposed.

FINE

A fine in the amount of $100,000.00 is imposed and is due immediately.

Interest requirement is modified as follows: The defendant is ordered to pay interest.

No restitution imposed.

SCHEDULE OF PAYMENTS

Payments shall be applied in the following order: (1) special monetary assessment; (2) non-federal victim restitution; (3) federal victim restitution; (4) fine principal; (5) costs; (6) interest; (7) penalties in full immediately

The defendant must notify the court of any material changes in the defendant's economic circumstances, in accordance with 18 U.S.C. §§ 3572(d), 3664(k) and 3664(n). Upon notice of a change in the defendant's economic condition, the Court may adjust the installment payment schedule as the interests of justice require.

Special instructions regarding the payment of criminal monetary penalties pursuant to 18 U.S.C. § 3664(f)(3)(A):

If this judgment imposes a period of imprisonment, payment of criminal monetary penalties shall be due during the period of imprisonment. In the event the entire amount of monetary penalties imposed is not paid prior to the commencement of supervision, the U.S. probation officer shall pursue collection of the amount due. The defendant will receive credit for all payments previously made toward any criminal monetary penalties imposed.

STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report.

Guideline Range Determined by the Court:

Total Offense Level: 32

Criminal History Category: 1

Imprisonment Range: 121-151 months

Supervised Release Range: 2-3 years

Fine Range: $17,500.00 to $12,056,180.00

The sentence is within the guideline range, that range exceeds 24 months, and the sentence is imposed for the following reasons(s);

The sentence is at the low-end of the guideline range and is sufficient punishment for the instant offense.

Supreme Court, U.S.
FILED
MAR 6 2002
CLERK

(3)

No. 01-1016

In the

Supreme Court of the United States

IVAN KERR,

Petitioner,

v.

RONNIE COHEN, a/k/a RONALD ALAN COHEN, RONALD ALLEN COHEN, R. ALLEN COHEN,

Respondent.

On Petition for Writ of Certiorari to the Court of Appeals for the State of Georgia

---

PETITIONER'S REPLY TO BRIEF IN OPPOSITION

ARTHUR J. SHELFER, JR.
Post Office Box 2295
Thomasville, Georgia 31799-2295
229.226.5551
Counsel for Petitioner

8PP

QUESTION PRESENTED

I. **WHETHER THE FEDERAL QUESTION WAS PROPERLY AND TIMELY PRESENTED IN THE COURTS BELOW.**

II. **WHETHER THE FEDERAL QUESTION WAS IGNORED BY THE COURTS BELOW BECAUSE RESTITUTION WAS NOT ORDERED AT SENTENCING.**

TABLE OF CONTENTS

		Page
QUESTION PRESENTED		i.
ARGUMENT FOR GRANT OF CERTIORARI		1
I.	THE APPLICABLE FEDERAL LAW WAS PRESENTED IN PETITIONERS INITIAL MOTION FOR SUMMARY JUDGMENT AS TO LIABILITY ON APRIL 24, 2000 AND SUBSEQUENTLY	1
II.	THE FAILURE OF THE GEORGIA COURTS TO TREAT THE FEDERAL QUESTION AT ALL IS THAT WHICH IS COMPLAINED OF	2
CONCLUSION		2
APPENDIX A (Brief in Support of Motion for Summary Judgment)		App.1

ARGUMENT

I. THE APPLICABLE FEDERAL LAW WAS PRESENTED IN PETITIONERS INITIAL MOTION FOR SUMMARY JUDGMENT AS TO LIABILITY ON APRIL 24, 2000 AND SUBSEQUENTLY. APPENDIX A, PP. 2, 3.

Said Motion was denied on March 2, 2000. Pet. App. A. at 1a. Title 18 U. S. C. 3664 (l) was presented again by reference in Appellant's Response to Defendant's Motion for Summary Judgment on September 21, 2000, Pet. App. B at 3a, by reference in Appellant's Brief to the Georgia Court of Appeals on January 26, 2000 Pet. App. D at 11a, in Appellant's Response Brief to the Court of Appeals on February 26, 2001, Pet. App. E at 15a, and in Appellant's Motion for Reconsideration on April 18, 2001, Pet. App. G at 32a.

It is never mentioned by the Georgia Courts.

II. THE FAILURE OF THE GEORGIA COURTS TO TREAT THE FEDERAL QUESTION AT ALL IS THAT WHICH IS COMPLAINED OF.

Sentence was imposed upon Cohen on April 25, 2001, Resp. Brief, App. C at App. 20, subsequent to all rulings of the Georgia Courts.

Further, the issue of restitution, albeit not ordered on that date, remains open, and mandates consideration, at least, by the Courts of Georgia. Pet. Brief, P. 12; Cohen Indictment, Count Two, Rsp. Brief, Ap. B, App. 16-18; Cohen Sentence, Resp. Brief, App. C, App. 25, citing sections of Title 18 U. S. C. § 3664.

United States Law is the law of Georgia. *Howlett by Howlett v. Rose*, 496 U. S. 356 (1990), as cited in Pet. Brief, P. 13.

CONCLUSION

Upon principles of law as well as equity, Certiorari should be granted.

Respectfully submitted,

Arthur J. Shelfer, Jr.
Counsel for Ivan Kerr
Post Office Box 2295
Thomasville, Georgia 31799
229.226.5551

APPENDIX A

IN THE SUPERIOR COURT
COUNTY OF THOMAS
STATE OF GEORGIA

IVAN KERR,	*	
Plaintiff,	*	
	*	**Civil Action No:**
vs.	*	**99-CV-1188**
	*	
RONNIE COHEN,	*	
a/k/a RONALD ALAN COHEN,		
RONALD ALLEN COHEN,	*	
RONALD COHEN,	*	
R. ALLAN COHEN.	*	
Defendant.	*	

BRIEF IN SUPPORT OF MOTION
FOR
SUMMARY JUDGMENT

A. STATEMENT OF FACTS

As a concise statement of facts, attached hereto as noted are:

1. Plaintiff's Complaint, verified under oath (Exhibit "A").

2. A copy of the Indictment of Defendant for Title 18 U. S. C. § 1343 Fraud by Wire, Radio, or Television (Exhibit "B"). A certified copy of said indictment is filed in Thomas County Civil Action # 99-CV-0249.

3. A copy of the transcript of the Defendant's Change

of Plea on January 21, 1999 in the United States District Court, Northern District of Florida, Gainesville Division. (Exhibit "C"). A certified copy of said transcript is filed in Thomas County Civil Action # 99-CV-0249.

B. ARGUMENT AND CITATION OF AUTHORITY

The fact situation here presented lends itself to Summary Judgment.

"A party against whom a claim, counterclaim, or cross claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof." [O. C. G. A. § 9-11-56 (b)]

"A conviction of a Defendant for an offense involving the act giving rise to an order of restitution shall estop the Defendant from denying the essential allegations of that offense in any subsequent Federal proceeding or State Civil proceeding, to the extent consistent with State law, brought by a victim." [Title 18 U. S. C. § 3664 (l)]

This is no case of accident, or even negligence.

Plaintiff herein is merely attempting to retrieve his own property, the loss of which was effected by Defendant, gain enuring to Defendant and others in his criminal

organization. Contact with Defendant was direct, and damage was substantial.

Defendant's counterclaim is of no legal effect and contradicted by those verified pleadings and exhibits on file. Evidence already before the Court disproves the counterclaim, and the same should be summarily dismissed in the course of granting Summary Judgment for Plaintiff.

B. CONCLUSION

Summary Judgment for Plaintiff as to liability in this matter is consistent with Georgia law and justice.

Plaintiff is entitled to Summary Judgment as to liability, subject only to proof of damages when documentation is available.

Respectfully submitted,

/s/ Arthur J. Shelfer, Jr.

Arthur J. Shelfer, Jr.
Attorney for Plaintiff
130 Remington Avenue
POB 2295
Thomasville, GA 31799
912.226.5551
SBN 639975